

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0384

In re: Welch Stockyards, LLC and
Darrel R. Clark,

Respondents

Miscellaneous Order

This matter is before the Administrative Law Judge upon the post decision Motion of the Complainant seeking clarification of procedural requirements. In the Motion, the Complainant indicates that the Default Decision and Order entered against the Respondents in this action was entered without affording the Respondents 20 days in which to file objections to the Proposed Decision which Complainant had submitted. Given the Respondents' repeated history of failing to respond to pleadings filed in this case, the Motion will be addressed at this time without the need to allow Respondents time to respond to the Motion.

Review of the record indicates that on September 8, 2011, Alan R. Christian, the Deputy Administrator of the Packers and Stockyards Program, Grain, Inspection, Packers and Stockyards Administration (GIPSA) filed the Complaint in this action alleging that the Respondents had violated the Packers and Stockyards Act, 1921, as amended and supplemented (Act), 7 U.S.C. §181, *et seq.* Copies of the Complaint were duly served upon the Respondents by certified mail on September 12, 2011. In the cover letter accompanying the Complaint, the Respondents were advised consistent with Section

1.136(c) of the Rules of Practice (7 C.F.R. §1.130 *et seq.*) of the requirement to file an Answer within 20 days of their receipt of the Complaint and that failure to do so would be deemed an admission to the allegations of the Complaint and a waiver of any right to an oral hearing.

On October 4, 2011, the Respondents were advised by the Hearing Clerk that an Answer had not been received within the time allotted by Section 1.136 of the Rules of Practice, 7 C.F.R. §1.136 and that they would be informed of subsequent proceedings. No response was made by either Respondent. On October 12, 2011, a Show Cause Order was entered directing the parties to show cause no later than fifteen days of the date of the Order why a Default decision and Order should not be entered. The Order further directed Complainant's Response to be accompanied by a Proposed Default Decision and Order.

On October 25, 2011, the Complainant filed its Response to the Show Cause Order. In that Response, Complainant requested entry of the proposed decision and order and indicated that on September 20, 2011 shortly following service of the Complaint on the Respondents Complainant's attorney had sent a letter and a proposed consent decision to Respondents by certified mail. The letter informed the Respondents that they could file an Answer and request a hearing or they could dispose of the matter by signing the proposed decision. Respondents did not respond to Complainant's attorney letter and despite having been advised of the necessity of filing an Answer both by the Hearing Clerk's and by Complainant's attorney's letters failed to file an Answer to the Complaint. The Respondents also failed to respond to the Hearing Clerk's "No Answer" letter of October 4, 2011, the Show Cause Order of October 12, 2011, the Complainant's

Response to Show Cause Order and Motion for Decision without Hearing by Reason of Default filed on October 25, 2011, or the certified mail advising them that the Default Decision and Order of November 9, 2011 had been entered which was received by the Respondents on November 14, 2011.

It appearing that Respondents have been afforded an opportunity on no less than five occasions to object to the proceedings either by filing an Answer to the Complaint or raising objection to a decision being entered¹ and further appearing that the time to appeal the Default Decision and Order has not yet run, ruling on the Motion for Clarification will be **DEFERRED**, pending expiration of the Respondents' appeal time of the November 9, 2011 Default Decision and Order and the receipt of any further communication from the Respondents expressing objection to the proceedings.

Copies of this Order will be served upon the parties by the Hearing Clerk.

November 17, 2011

Peter M. Davenport
Chief Administrative Law Judge

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U.S. Department of Agriculture
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Washington, D.C. 20250-9203
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¹ The record is silent as to whether Complainant's Response to the Show Cause Order was in fact served on Respondents. It is the Hearing Clerk's practice to serve copies of all pleadings upon the parties; however, the routing slip normally used to document such service is not present.